SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 909

WALTER E. MEYER, INTERVENOR,
Petitioner,

vs.

BERRYMAN HENWOOD, AS TRUSTEE OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY LINES, ET AL.,
Respondents

REPLY BY SOUTHERN PACIFIC COMPANY, ONE OF THE RESPONDENTS, TO PETITIONER'S PETITION FOR REHEARING.

We understand that petitioner, Walter E. Meyer, has filed a Petition for Rehearing in this Court in respect of its order dated March 10, 1947, denying petitioner's Petition for Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit; that he has assigned as a ground for such petition, as a new development, a petition filed in the District Court below on April 30, 1947, by the Trustee and the Debtor, requesting a dismissal of the reorganization proceeding on the ground that the Debtor is now solvent. It is also understood that the Debtor, as a respondent herein, believing that this Court should be in-

formed correctly of this development, intends to file a reply to the Petition for Rehearing, setting forth the dismissal program. Since Southern Pacific Company has been a target of petitioner Meyer's accusations, we wish to state briefly what the dismissal program is intended to accomplish and why Southern Pacific Company supports the program as well as all creditors of the Debtor and all of its minority stockholders represented in the reorganization proceeding, except Meyer, support the program.

The earnings of the Debtor continued to be high after the close of the war, and early in 1947 it became apparent that, with some voluntary co-operation by creditors, Debtor is no longer in need of reorganization. On April 30, the Debtor and the Trustee filed with the District Court their petition setting forth the facts concerning Debtor's financial condition and the program for dealing with its creditors. A hearing on the petition was held on May 19, 1947, and, after taking evidence and hearing the parties, the District Court, through the Honorable George H. Moore, on May 20, 1947, made its order approving the dismissal program and directing the Debtor to file with the Interstate Commerce Commission application for authority to issue securities as contemplated by the program.

The dismissal program approved by the District Court greatly benefits Walter E. Meyer as a stockholder, as well as all other stockholders. Under the program, the property will be restored to the Debtor, and the stockholders will have exactly the same legal position as prior to the institution of the reorganization proceeding. As shown at the hearing, their economic position will be greatly improved since the Debtor's interest charges will be reduced from approximately $3,000,000 to approximately $2,000,000 annually, the Debtor will be possessed of large cash balances even after the debt retirements called for by the

program, and physical properties are in excellent condition. In contrast, under the plan of reorganization formulated by the Commission and approved by the courts, all of the stock was completely eliminated.

Southern Pacific Company supports the dismissal program as the interests of all the stockholders, majority and minority, are to be preserved. This objective was assisted by voluntary concessions which it made, as a creditor, as a part of the program. The exact treatment of the note held by it will appear in the program set forth in the Debtor's reply to the Petition for Rehearing. It will be noted that Southern Pacific Company has consented to extend the maturity of the overdue $17,882,250 note held by it, so that other debts may be paid, either immediately or in the future before the Southern Pacific Company note as extended will become due; to reduce the interest rate on the amounts owing it from 5% to 3% annually; and to accept a non-interest-bearing note for a portion of the pastdue interest owing it while all other creditors are being paid all pastdue interest. In order to make the program possible, other creditors also have made substantial concessions.

It is difficult to understand how Meyer can seriously believe, or represent to this Court, that any injury results to him from the dismissal program. The fact is, as pointed out, that the dismissal program places him in a better position than he was before the reorganization was begun. For all the stockholders, for Southern Pacific Company as the majority stockholder, for Meyer as a minority stockholder, and for other minority stockholders, the filing and approval of the dismissal program are most fortunate developments. It is important, in the interest of all the stockholders, that the dismissal program receive expeditious treatment.

A complaint by Meyer that Debtor's $17,882,250 note purchased by Southern Pacific Company from the Recon-

struction Finance Corporation, pursuant to its guaranty, is not subordinated or expunged in the dismissal program is without merit because the Commission and the courts have held that the note should not be subordinated or expunged. A complaint by Meyer that Southern Pacific Company is not compelled by the program to lease the railroad lines of the Debtor is without merit, because the Commission and the courts have held that Southern Pacific Company could not and should not be compelled to enter into a lease with the St. Louis Southwestern Railway Company. There are conflicting views as to whether a lease would be beneficial to the parties. This is a matter for business judgment and, if it should reach such a point, for negotiation between parties free to act.

Conclusion

It is respectfully submitted that the Petition for Rehearing should be denied promptly.

Dated: San Francisco, California, May 23, 1947.

BEN C. DEY,
GEORGE L. BULAND,
ROBERT L. PIERCE,
65 Market Street,
San Francisco 5, California.
CLAUDE O. PEARCY,
418 Olive Street,
St. Louis 2, Missouri.
STANFIELD B. JOHNSON,
205 Transportation Building,
Washington 6, D. C.

Certificate of Service

I hereby certify that I served a copy of the attached reply by Southern Pacific Company in opposition to petition for rehearing on Walter E. Meyer, petitioner, by depositing same in the United States mails in Washington, District of Columbia, with proper postage duly prepaid, this — day of May, 1947.

STANFIELD B. JOHNSON,
205 Transportation Bldg.,
Washington 6, D. C.
Of Counsel for Respondent,
Southern Pacific Company.